

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ATM FEE  
ANTITRUST LITIGATION

No. C 04-2676 CRB (JL)

This Document Relates to  
ALL  
ACTIONS

**ORDER FOR IN CAMERA REVIEW**

**Introduction**

All discovery in this case has been referred by the district court (Hon. Charles R. Breyer) as provided by 28 U.S.C. §636(b) and Civil Local Rule 72. The Court received a letter from the parties regarding a discovery dispute. The letter was not e-filed in the Court's docket.

**Discovery Dispute**

Concord claims it inadvertently produced to Plaintiffs three documents (six documents which are actually two copies of each of three documents) which are subject to the attorney-client privilege. Plaintiffs dispute this contention. There is a stipulated protective order in place in this case, which provides that an inadvertent production of documents does not waive any privilege. Concord is prepared to offer sworn declarations from the attorneys involved that the documents contain legal advice and are properly

1 protected by attorney-client privilege. Concord will agree to in camera review and will  
2 provide declarations prior to or concurrent with such review.

3 The first document is a 1999 memo from Baker & McKenzie to Star's marketing  
4 advisory group regarding compliance with antitrust laws. Plaintiffs dispute the claim of  
5 privilege on the basis that it is a "compendium of policies and rules," not subject to the  
6 attorney-client privilege. In re Sulfuric Acid Antitrust Litigation, 2006 WL 991039 at \*14  
7 (N.D.Ill.)

8 The second document is a January 2001 memo from Star's outside counsel, David  
9 Clanton, of Baker & McKenzie, to Star's senior executives, providing legal advice  
10 concerning the Government's approval of Concord's acquisition of Star. It states on the  
11 front page, with emphasis "Attorney-Client Privileged and Confidential."

12 The third document contains a single paragraph titled "Offline Legal Meeting."  
13 Defendants contend it contains legal advice provided by Concord's outside antitrust  
14 counsel to guide Star staff in making pricing and routing decisions. See Upjohn, 449 U.S. at  
15 392-393.

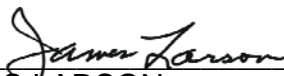
16 Plaintiffs dispute that the documents contain legal advice, and contend that Concord  
17 has waived privilege by producing the documents multiple times, but are willing to agree to  
18 an in camera review of the documents, to which Defendants do not object.

### 19 Order

20 This Court hereby orders that Defendants forthwith submit the documents at issue to  
21 the Court for in camera review, along with all supporting declarations, and that the joint  
22 statement be e-filed in the Court's docket.

23 IT IS SO ORDERED.

24 DATED: July 24, 2006

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26   
27 JAMES LARSON  
28 Chief Magistrate Judge